WEDNESDAY, DECEMBER 6. Supreme Court of the Hawailan Islands.

Wailuku Sugar Company vs. H. A. Willemann and Charles C. Harris.

DEVOTED TO HAWAHAN PROGRESS.

PUBLISHED AND EDITED BY

HENRY M. WHITNEY.

good reason to believe that they intend to de-liver it to some one else; they therefore, pray for an injunction to forbid their delivering it to This is an appeal by the respondents, proprie-tors of the Walluku Sugar Plantation, from a decision of the Commassioners of water rights of the district of Wailuku, Island of Maui, rendered

father of Kaleo, and now the property of the Wailuku Sugar Company, and containing about six acres, is entitled to water from the Waiebu Stream or ditch running on the south side of the Watehu Valley, and that said piece or parcel of land shall be watered on the Wednesday of each and every week from said ditch, and as soon as the land is watered the water to be turned into the said stream or ditch for the use of others. and no other land belonging to the Waslaka Sugar Company shall be watered from said stream or ditch flowing from the Waiehu Valley."

This appeal was taken to the Sapreme Court in banco, and owing to the First Associate Justice being one of the respondents and the absence of the Chief Justice, it was agreed to submit the case to the final decision of the Second Associate Justice.

Further testimony was taken at Wallaku on this appeal on the 13th June. 1876, and the argument was had on the 22nd July.

It was agreed at the argument that the plaintiffs purchased the land the right to use water
on which is the subject matter of this controversy on the 19th July, 1864.

The respondents contend that the land in The respondents contend that the land in a final judgment could be reached, unless they are restamed by injunction from disposing of it, uestion is described as "Kula" land in the uestion is descri award, and therefore took no water by the grant; and the plaintiffs contend that the decision of

the Commissioners should be sustained because this land is a "lele" of the Ahupuan of Warehu, and therefore entitled to water. But the title itself to wit, the Land Commission award, would show these facts, if they were true, but it is not in evidence; it is therefore impossible to The testimony of the witnesses seems to me

to prove quote clearly that this land was au-ciently watered from the Waishu stream, as the water-lend and the kalo patch banks on it would indicate, but that it had not had water used on it for the purposes of origation for a period of over twenty years previous to its sale to the plaintiffs in 1864, and that the specific use and appropriation of the water on this land since this ite has been less than twenty years.

But there is no testimony in this case as to whether within the period (before 1864) while the right to use water on this land was not exercised, there has been an adverse enjoyment of this water by the respondents or other lower proprietors, in consequence of the non-user, against which it would be inequitable now to enforce the old casement.
In order, also, to settle satisfactorily whether

the use of water for the purposes of irrigation is, in an arid climate, a natural want as distin-guised from an artificial want (independent of an established prescription) it would depend a good deal upon the question as to whether the party claiming the use of the water for irrigation is a riperion proprietor; now the settlement of the question whether lands upon an ancient but artificial water-course have the incidents of riparian proprietorship would depend largely upon the fact whether such water-course was accustomed to flow uninterruptedly and with the regularity of the natural stream itself, of this re is no evider After patient and anxious study of this case,

I have come to the conclusion that the judgment of the Commissioners should be annulled, for it was evidently founded upon the idea that the land in question was a "fele of Waielu," which, as indicated above, is not proved, and, proved, the discussion as to whether a "lele" of an Abupona lying outside of its boundaries is entitled to be watered from the Ahupuna

spondents for I am unable from want of sufficient. either plaintiffs or respondents are. I am at loss also to ascertain apon what principle the Com- forwarded in obedience to this letter, it was another. missioners based their award of the quantity of their duty to point out what fault they found water which the plaintiffs night are on this land to wit: on every Wednesday, sufficient to water it —they not having before them as parties the other landowners using water from this watercourse, and there is no testimony as to the amount of water used by the respondents and

The Statute says that in settling such controversies the Commissioners shall give such a de-cision as may in each particular case appear to them to be just and equitable between the part-ies interested, such decision, however, must be

under the Statute constituting this Commission,

My decision is that the award of the Commissioners be acculled, that the plaintiffs use the water on this land as they had been accustomed to use it at the time these proceedings were in-stituted, and without prejudice to the right of either party to bring a bill or such other pro-ceedings as may be deemed advisable in order

A. Francis Judo, Second Associate Justice Supreme Court, A. S. Hartwell, for plaintiffs; W. C. Jones, for respondents. Honolule, H. I., Oct. 30, 1876.

Supreme Court of the Hawaiian Islands-October Term, 1876. Ahuna & Alona vs. J. M. Ranahikana, et alii.

CIPINION BY HARRIS, J.

that the plaintiffs had purchased from the defend-ants on the 27th day of May, 1876, all their growing crap of rice at \$1 95 per 100 pounds-\$300 to be paid on the 1st day of July which was previous to the harvesting of the crop, and the balance to be paid in five mouths from the same day; and the bill forther alleges that it was then and there agreed that a more formal agree-ment should be drawn up to be signed by the parties, and that such an agreement was drawn and offered to defendants June 7th, and that they refused to sign it giving as a reason that the rice bad risen in value. The bill farther alleges that in consequence of the contract the plaintiffs had agreed to deliver the same rice for a profit of \$400 or thereabouts; that the plaintiffs will lose that sum, and be liable for damages on their own contract to deliver, and that they are liable to irreparable loss, unless a specific performance is enforced; and further that the defendants are about to dispose of the rice, and are unable to raspond to the damages which the plaintiffs are fiable to be subjected to, and prays an injunction

tion securing the payment of the amount which may be found due when the rice shall be har-

vested, and the weight ascertained.

To this bill defendants demurred alleging want of equity jurisdiction, and upon the demurrer being overruled, no exception was taken, deliver was not the advance in rice, but because

The plaintiffs would comply with the terms of the offer contained in the letter, before a binding contract should be effected.

AN INDEPENDENT JOURNAL,

DEVOTED TO HAWAHAN PROGRESS.

The plaintiffs would comply with the terms of the offer contained in the letter, before a binding contract should be effected.

There was no appeal taken from the decision overfuling the demarrer, per was the question of jurisdiction raised again in the answer, but as it.

An order to show cause was issued returnable.

has been made a point in the appeal, we will on the 30th August. The Police Justice sent up his record and submitted that upon the re-It is said that the complainants will have an cords he was right in refesing the appeal, thus ample remedy at law. This case differs essentially from a bargain to deliver 50,000 pounds of rice. If it is a contract at all, it is a contract to 1876, refused.

deliver the whole of a certain crop, whether it be more or less. The plantiffs had no means of same day, and on the 25th October the Attorney it shall have been harves'ed. But they learn that the defendants will not deliver it, and fight ing the question he intended to raise as to whether an appeal would lie from an order at Chamand Charles C. Harris.

for an injunction to forbid their delivering it to bers refusing a Writ of Mandamas. The court others. They had no means of knowing what set the 2nd of November for the hearing, and the price would be at the time of delivery, and, the counsel for the petitioners took notice. The relying on the contract, have re contracted to de- Supreme Court adjoined sine die on the 27th of

liver it to another, and had no means of a-cer-taining what they would be obliged to pay for The me The members of the court came in on the 2nd November, but the case went over until the 3rd, the district of Wailuku, Island of Maui, rendered Oct. 15th, 1875, which decision is as follows:

SThat the lele formerly belonging to the lather of Kaleo, and now the property of the Wailuku Sagar Company, and containing about six acres, is entitled to water from the Wailuba Stream or ditch running on the south side of the injured by the breach to have an election either Court the appeal and all questions concerning it

ing the four regular law terms prescribed by

The fact is that the answer is not in good faith in this respect, for if it were, on being secured beyond question, they would cease to ou-ject to the performance of their contract. By the hearing at the next "regular term," and a their answer they admit that they declined to

take the guarantee of Mesers Chulan & Co., a well known and most responsible firm, without The fact is that the rule was made to secure promptitude and not to interpose delays. We construe the rule to mean that all such appeals well on the day of accepting their offer us on the day when they avered that they would not deliver, and rice had, in fact, advanced in the meantime.

But the respondents say that they did not contract, but only agreed that they would contract, and when the contract was sent to them, the terms were varied. Their letter of May 27, in the Maysian Language translated, reads as in a set the next law term of the authority of the court to hear an appeal in vacation when justice may seem to require it. In this particular instance, it was a mere accident that the judgment now appealed from was not given in the early days of the term or oven before the term commenced, and certainly it would be far from justice that they have a set to saw that they court could not or would not of the previous transaction with the plaintiffs as must be moved on, and shall be heard at least as ice to say that the court could not or would not hear a case which has been so delayed and which "Anuna,—Our rice is sold to you and Alona, at the price of \$1 95 per 100 pounds, \$300 to be paid in advance, the balance at five months. Do

The petitioners claim that a wrong has been

you write a covenant for the rice, binding the names of Alona and your own; write first your name, and if we see that the paper is not written properly, we shall refose it. The five months covenanted shall begin on the 1st day of July. they are entitled to any) as soon as possible. It would not be supposed that the petitioners would desire any delay in rectifying the wrong of

The Attorney General contends that the appeal should be dismissed, because a Writ of Man-Certainty this shows an offer and the complete acceptance of it. The whole rice is sold for an agreed price and terms; it requires no other damus is a high prerogative writ, to be issued in such cases as this at the discretion of the court numes than the plaintiffs; it tells them to write invoked, and as its allowance is, under the wordwould be idle.

But in setting aside this award of the Commissioners. I do not say that the plaintiffs have no right to use water on this hand, nor do I say that the plaintiffs have both parties, and merely says that if the paper is wrongly written they will not accept it, which is we see no reason for refusing to aflow the that this right to water is shown to belong to is the same thing as one agreeing to buy a house, legal discretion exercised by a single justice in respondents, or that by the failure of the plain. and the seller to make a deed, which the buyer matters so important as this to be reviewed by tiffs to show title to it—it belongs to the respondents for I am unable from want of sufficient
testimony to say definitely what the rights of
uess of a contract? Not at all; and if they did
not better practice than the other course to which
testimony to say definitely what the rights of
uess of a contract? Not at all; and if they did
not be the Court in Banco. This is certainly a much
better practice than the other course to which
parties would be driven, of being obliged, if the

> We notice also that in the case of John Thos vich it. Waterhouse, 2 Haw. Reports, p. 25t, an appeal
> The paper that was sent is in the form of a
> was thus taken on the refusal of the Chief Justice to issue a Writ of Manda

ne the worse for defendants. Is reads as fol- cated above, the Police Justice in complying with the order to show cause, has sent up his whole record as fully as if a Writ of Error or a Leyonn, of Pubeemiki. Island of Oahu, H. I., Writ of Certiorari had been asked for and agrees to sell and deliver to Ahuna and Alona, granted.

of good, clear, merchantshie pandy, being the growing grop about to be harvested, on or before the let day of August, A. R., 1876. And the said Ahuna and Alona agree to pay for the said paddy one dollar and ninety-five cents (\$1 95) per handred pounds; \$300 to be paid in cash on the let day of July, 1876, and the balance to be upon exceptions to the decision of Police Court paid five months from first payment, the said on points of law in accordance with the last para-Ahuna and Alona giving a note for said balance, graph of Section 1006 of the Civil Code. These after the amount shall have been ascertained, by points of law must always be made to appear. the delivery of said paddy.

"Done at this day of June,
A. D., 1876.

"We find nothing in the pupers sent up and the one objection made by the defendants that the execution of the bond was not sufficiently proved. But the record itself shows that the On of the variations indicated by counsel is subscribing witness to the bond gave testimony that 50,000 pounds is mentioned in this agreement and is not in the latter. But it says viewing it, we find that there was satisfactory Police Justice committed no error of law in finding the bond proved.

> A. FRANCIS JUDD. Justices of the Supreme Court. A. S. Hartwell, for the petitioners; the Attorney General, for the respondents.
>
> Honolulu, H. I., Nov. 6th A. D., 1876.

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other parties on their lands below from the same

I consider that the Appellate Court has,

determine the rights of the parties interested.

"more or less" being the growing crop, and is in fact no different than if it had said " the growing crop estimated at 50,000 pounds." The other variation is "good, clean, merchantable paddy" which words are not in the letter. These words are mercantile phrases, and in this case mean nothing further than that the paddy is to he well thrushed out and winnowed, or in other words they are to pay for paddy and not rice, straw or chaff, and it defendant did not like the

with it.

lows:

in the Hawaiian language translated, reads as

mutual agreement, which was certainly unneces-

words he might early strike them out.

Then the latter of May 27th constitutes the

plaintiffs' as a memorandum for themselves of

There is no reason why the defendants should

A. FRANCIS JUDD,

ot perform the contract thus clearly, deliber-

W. C. Jones and R. F. Brickerton, for plain-

Supreme Court of the Hawalian

Islands.

In re petition of F. T. Lenchan et al. for a

HARRIS AND JUDD J. J.

Honolulu, H. I., Nov. 6th, 1876.

Writ of Mandamus.

The bill was filed June 13, 1876, setting forth by their letter was the written statement of the the contract of which the letter would serve as a memorandum for plaintiffs. ately and effectually entered into, and accordingly the decree below is affirmed.

OHAS. C. HARRIS. tiffs : E. Preston and A. S. Hartwell, for defend-

against the sale, and that the defendants be required to deliver the said evoy of rice.

The plaintiffs bring into court the \$300 in money, and offer to have executed any obliga-

The papers in this case show that the Minister of the Interior brought an action against F. T. Lenehan and A. S. Cleghorn in the Police Court and answer was made, in which there was no of Honolula to recover the penalty of a bond of further exception taken to the jurisdiction. But the defendants say that the reason of refusing to spirituous liquors at retail. Judgment was recovered to the principal defendant as licensed vendor of a spirituous liquors at retail. dered for the plaintiff on the 18th of August, 1876. The defendants noted an appeal to the that one of the defendants had had a previous transaction with one of the plaintiff, and had been kept out of his money a year; that the defendants had written the letter, but expected fendants had written the letter, but expected.

Court the appeal and all questions concerning it to take damages at law or to have a specific performance in equity. The remedies are concurrent, but not co-extensive with each other. The question is therefore of the convenience of leaving the party to his ramedy in damages at law where that will give him a full and clear compensation," (Story's Equity Jurisprudence, p. 717.) If therefore there is any doubt whether claiming would have an adequate remedy at law to have an adequate remedy at law to have an adequate remedy at law to have an adequate remedy at law. plaintiffs would have an adequate remedy at law, ing the there can be no reason why the delendants Statute. If the original jurisdiction being at Chambers

should not be required in equity to perform their may be invoked at all times, the Statute allow-ing an appeal should not be construed so as to These plaintiffs have shown, as is set forth ing an appeal should not be construed so as to abridge the rights of such surfaces unless it is so clearly expressed. Before the promulgation of Rale IV. It was the uniform practice of the Supreme Court to bear cases on appeal from decisions made by a Justice at Unumbers at any time when the members of the court could be called together in Bacco. This was found to be above, very good reason to believe that they would not have an adequate remedy, certainly at the time of commencing these proceedings, and conducive of delay from there being no fixed time at which such appeals must be heard, and in 1871 the rule was framed, the sat paragraph of which reads: "All appeals duly taken shall the injunction and the necessity of it involves be heard at the next regular term of the Appel-late Court.' If this rule limits the authority of the whole merits of the case, and therefore would dispose of the question of jurisdiction the court, so that no longer any authority exists to hear appeals of this nature in Banco at Cham-bers, it would follow that they can bear no appeal effectually. The respondents can have no reason to complain of being required to keen their con-Since in their answer they aver that, in their refusal, they are not actuated by the desire to obtain a higher price for their rice, but by a an appeal from a judgment of a single Justice fear that they would not get the money for it. fear that they would not get the money for it, which fear is based on some previous transreleasing a foreign ship, could not be heard until the recurring of a regular law term, and the sagsection with one of the planting; now y tenders by the bill, and in open court as well as the hearing that a special term might be at the hearing that a special term might be holden would not be of any avail to prevent the

and the aforesaid \$300 to be paid in advance on the first day of July of the present year.

We the company whose names appear below,
(Signed) J. M. KANAHIKAUA? Chinese
(Signed) S. KAAIMANU, Characters which he complains.

sary, and indicates misappreheusion of the requirement of the letter, but at the same time is whether the Writ should be allowed. As indiof Oabu, aforesaid, 50,000 pounds more or less of good, clear, merchantable paddy, being the

> The Writ prayed for is therefore denied. CRAS. C. HARRIS.

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